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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,979	04/05/2001	Jeffrey D. Flood	2695.01US02	4125
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BRIGGS AND MORGAN P.A. 2200 IDS CENTER 80 SOUTH 8TH ST MINNEAPOLIS, MN 55402				
			EXAMINER SORKIN, DAVID L	
			ART UNIT 1723	PAPER NUMBER

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/826,979

Applicant(s)

FLOOD ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29, 31-34, 36-47, 49-52, 54-56 and 58-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 38-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28, 29, 31-34, 36, 37, 46, 47, 49-52, 54-56 and 58-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 47 and 58 have been amended in a manner which makes them duplicates of their parent claims. If the parent claims are found allowable, these dependent claims will be objected to.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 28, 29, 31-34, 36, 37, 46, 47, 49-52, 54 and 55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. These claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 28 and 46 have been amended to apply the word "fully" to the phrase "engage the side wall". No support is found in the original disclosure for such a distinction.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 28, 29, 31-34, 36, 37, 46, 47, 49-52, 54 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 28

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and 46 have been amended to apply the word "fully" to the phrase "engage the side wall". It is unclear what distinction applicant intends. The specification provides no assistance in determining what is or is not full engagement in the context of the limitation. Also, in claim 36, line 1, "wall" should read - - cover - - ; in claim 36, line 15, "wall" should read - - cover - - ; and in claim 54, line 1, "wall" should read - - cover - - .

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 28, 29, 31-33, 36, 37, 46, 47, 49-51, 54, 55, 56 and 58-60 are rejected under 35 U.S.C. 102(b) as being anticipated by McCleary et al. (US 3,459,620).

Regarding claim 28, McCleary ('620) discloses a slurry mixer comprising a substantially cylindrical side wall (24) with a lower end and an upper end; a base wall (the wall below 17 as seen in Figs. 1 and 6) enclosing the lower end of the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a top cover (10c) enclosing the upper end of the side wall; a first stirring apparatus fixedly mounted in the mixing region, wherein the first stirring apparatus has a plurality of upper mixing members (18a,21) that extend from the top cover; and a second stirring apparatus rotatably mounted in the mixing region, wherein the second stirring apparatus has a lower support member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower support member, wherein the upper mixing members and the

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lower mixing members engage each other as the second stirring apparatus is rotated to remove slurry therefrom, and wherein at least one of the lower mixing members fully engage the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 29, at least one of the plurality of upper mixing members engages the lower support member as the second stirring apparatus is rotated (see Fig. 1; col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 31, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 32, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 33, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 36, the top wall has three ports (11,12,13). Regarding claim 37, a dust collection apparatus (hopper 11) operably connected to the slurry mixer. Regarding claims 46 and 47, McCleary ('620) discloses a slurry mixer comprising a side wall (24) with a lower end and an upper end; a base wall (the wall below 17 as seen in Figs. 1 and 6) enclosing the lower end of the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a top wall (10c) enclosing the upper end of the side

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wall; a first stirring apparatus fixedly mounted in the mixing region, wherein the first stirring apparatus has a plurality of upper mixing members (18a,21) that extend from the upper member; and a second stirring apparatus rotatably mounted in the mixing region, wherein the second stirring apparatus has a lower support member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower support member, wherein the upper mixing members wipe slurry from the lower support member, wherein the lower support members wipe slurry from the top wall, and wherein at least one of the lower mixing members fully engage the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 49, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 50, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 51, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 54, the top wall has three ports (11,12,13). Regarding claim 55, a dust collection apparatus (hopper 11) operably connected to the slurry mixer. Regarding claims 56 and 58, McCleary ('620) discloses a method of operating a slurry mixer comprising providing a slurry mixing having a

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substantially cylindrical side wall (24), a base wall (the wall below 17 as seen in Figs. 1 and 6) and a top wall (10c), wherein the side wall has a lower end and an upper end, wherein the base wall encloses the lower end of the side wall, wherein the top wall encloses the upper end of the side wall, the base wall and the top wall define a mixing region (see Fig. 1); mounting a first stirring apparatus in the mixing region, wherein the first stirring apparatus includes a plurality of upper mixing members (18a,21) that extend from the top wall; rotatably mounting a second stirring apparatus in the mixing region, wherein the second stirring apparatus includes a lower support member (17) and a plurality of lower mixing members that extend from the lower support member (18,19a,22); feeding slurry components into the mixing region (see col. 4, lines 58-62); rotating the second stirring apparatus in the mixing region to form a slurry from the slurry component (see col. 3, lines 43-55); wiping slurry from the lower support member with the upper mixing members, from the top wall with the lower mixing members, and from the side wall with one of the lower mixing members (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 59, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 60, slurry is dispensed from the mixing region with a dispensing auger (30).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 28, 29, 31-33, 36, 37, 46, 47, 49-51, 54, 55, 56 and 58-60 are, the alternative to the rejection under 102(b) above, rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary et al. (US 3,459,620). While the examiner fully considers that the above claims are anticipated within the meaning of section 102 for the reasons discussed above, in the alternative that one might argue that one or more of the scraping/engaging functions or steps is not sufficiently disclosed, it is considered that the statement in col. 2, lines 53-57 that an object of the invention is to produce a "self-cleaning" apparatus would have suggested that the clearances of the relevant parts be sufficiently claims for scraping to occur.

10. Claims 34 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary et al. (US 3,459,620). In the apparatus of McCleary ('620) discussed above, it is not explicitly stated that a "motor" rotates the second stirring apparatus. However, col. 3, line 51 ("rotatably driven by shaft 16") and col. 4, line 12 ("mixer speed of 300 [rpm]") would have strongly suggested a motor to one of ordinary skill in the art.

***Response to Arguments***

11. Applicant argues that the word "fully" somehow distinguishes the apparatus claims over the prior art, however applicant does not point out any support for this new



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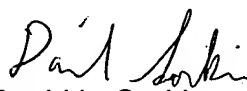
limitation in the originally filed application. While the member of the reference might not engage the wall at all times, it is not clear that the word "fully" excludes such a situation nor is it clear that such a distinction is germane to an apparatus claim's patentability.

12. The discussion of "self cleaning" in col. 2, lines 53-57 would have instructed one of ordinary skill in the art to have made clearances close enough for scraping to occur.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS